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FILE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

MOTOROLA SATELLITE
COMMUNICATIONS, INC.

Request for Pioneer's Preference
to Establish a Low-Earth Orbit
Satellite System in the 1610-
1626.5 MHz Band.

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) ET Docket No. 92-28
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APR 24 1992

Federal Communications Commission
Office of the Secretary

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~~OFFICE OF MANAGING DIRECTOR~~

OPPOSITION TO REQUEST
FOR CONFIDENTIAL TREATMENT

Constellation Communications, Inc. ("CONSTELLATION™"),
by its attorneys, hereby submits its opposition to Motorola
Satellite Communications, Inc.'s ("Motorola") Request for
Confidential Treatment submitted on April 10, 1992. Motorola
submitted this request in conjunction with Motorola's pioneer
preference request referenced above. Constellation requests
that the Commission reject Motorola's request for
confidentiality and present Motorola with the option of opening
the material for public inspection or reaffirming its request
for the Commission to return the materials.

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List A B C D E

Motorola submitted this confidentiality request to include materials contained in its April 10, 1992 supplement to its previously filed Request for Pioneer's Preference. Motorola stated that the information submitted to the Commission "includes highly confidential, sensitive and company proprietary information."^{1/} This includes "information concerning pending applications, preliminary results of experiments and field test, a videotape of a voice simulation using the IRIDIUM system, and a computer diskette containing copyrighted software which simulates operation of intersatellite links."^{2/} Motorola's request for confidentiality is based on its view that this material "constitutes trade secrets and commercial, financial or technical data which must be guarded from Motorola's competitors."^{3/}

CONSTELLATION objects to the Motorola request based on two grounds. First, the Commission must not base its licensing decisions involving hotly contested mutually exclusive applications on information not available to all applicants. Second, CONSTELLATION submits that the Commission's recent

^{1/} Letter from Philip L. Malet to Donna R. Searcy dated April 10, 1992.

^{2/} Id.

^{3/} Id.

pioneer's preference rules do not envision the use of confidential information in making pioneer's preference determinations.

The Motorola pioneer's preference proceeding may not be viewed independently but must be viewed as a part of Motorola's application to construct and operate the IRIDIUM satellite system. Motorola, however, is only one of five applicants for licenses to operate low earth orbit satellite systems in the bands previously licensed for the radio determination satellite service. Given the mutual exclusivity of these applications, however, grant of a preference to Motorola would contravene the Commission's licensing responsibilities. Moreover, use of confidential information, not available to competing applicants, to grant a preference which would prejudge a contested licensing issue would be wholly inappropriate and an affront to Commission rules and policies.

As an additional matter, the Commission must recognize that the pioneer's preference decisions do not envision the use of confidential information.^{4/} Requests for pioneer's preference are adjudicative proceedings under the Commission's

^{4/} See Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services, 6 FCC Rcd. 3488(1991).

rules.^{5/} Because oppositions to Motorola's request for pioneer's preference were filed on April 8, 1992, this had already become a restricted proceeding at the time Motorola requested confidential treatment for its supplemental filing.^{6/} Any written presentation not served on the parties to a restricted proceeding is a direct violation of the Commission's ex parte rules and must be rejected.^{7/} Thus, Motorola must be prohibited from requesting confidential treatment for its response to the oppositions filed in response to its request for pioneer's preference. Motorola must not be allowed to manipulate the pioneer's preference rules to stage an end run around the Commission's ex parte rules. To permit this action by Motorola would undermine the integrity of the Commission's proceedings and deny other parties the fairness, impartiality and due process guaranteed by the Commission's rules.^{8/}

^{5/} Id. at 3993.

^{6/} See 47 C.F.R. § 1.1208(c).

^{7/} See 47 C.F.R. § 1.1202(b).

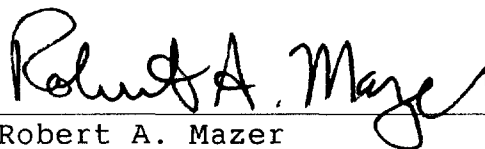
^{8/} See 47 C.F.R. § 1.1200.

If Motorola believes this material is vital to its pioneer's preference request, it has the option to permit inspection by parties to the proceeding and to open the full scope of Motorola's submission to public comment. Otherwise, Motorola should reaffirm its request to have the disputed information returned. Motorola must not be permitted to manipulate the Commission's proceedings to the detriment of other parties by following any other course.

Conclusion

For the foregoing reasons, CONSTELLATION urges the Commission to deny Motorola's request for confidential treatment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert A. Mazer", is written over a horizontal line.

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April 23, 1992

CERTIFICATE OF SERVICE

I, Robert A. Mazer, hereby certify that a copy of the foregoing Opposition to Request for Confidential Treatment of Constellation Communications, Inc., was sent by first class United States mail, postage prepaid, this 23th day of April 1992, to the following:

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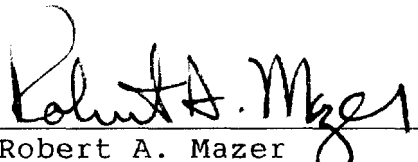
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